IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2969 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALUKA PANCHAYAT (SCARCITY)

Versus

PANDYA HIRABHAI MANABHAI

Appearance:

1. Special Civil Application No. 2969 of 1997

MR JV JAPEE for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/01/2005

ORAL JUDGEMENT

Heard lerned advocate Mr. Japee for the petitioner and Mr. Raval for the respondent. In this

petition, the order passed by the Labour Court, Himatnagar in Reference No. 107 of 1996 dated 17.1.1997 is challenged by the petitioner wherein the labour court has granted full back in favour of the respondent from 20.7.1988 to 10.1.1997. While issuing rule, this Court has granted interim stay against the operation of the impugned award by order dated 21.4.1997. Learned advocate Mr. Japee submits that the award in question was passed by the Labour Court in absence of the petitioner, therefore, it is an ex-parte order made by the labour court and the petitioner was not able to avail the opportunity of hearing before the labour court by contesting the claim of the respondent. From perusal of the award in question, it is clear that it is an ex parte award made by the labour court. As per Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966, petitioner can approach the labour court concerned for setting aside such an ex-parte order passed by it and as per Rule 26-B of the said Rules, the petitioner can also make prayer for stay of such an ex parte order. Therefore, considering the fact that such an alternative remedy is available to the petitioner to file an application under Rule 26-A of the said Rules for setting aside the order, this Court has not entertained this petition and has not considered the merits of the matter. Therefore, it is open for the petitioner to file an application for setting aside the order in question before the labour court within one month from the date of receipt of copy of this order. Pendency of the present petition before this court till the date of filing of the application by the petitioner before the Labour Court be considered tobe genuine or sufficient cause for delay and the labour court shall have to consider such application on merits and in accordance with law without considering the question of delay. Interim relief granted by this Court against the operation of the impugned order will continue to operate till the application, that may be filed by the petitioner, is examined by the labour court. Subject to these observations and directions, this petition is disposed of without observing anything on merits. Rule is discharged. Interim relief stands vacated. No order as to costs.

(H.K. Rathod,J.)

Vyas